

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0188P

Income Tax

Calendar years 1994 & 1996, Short Years June 30, 1995 and December 31, 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, in a letter dated April 12, 1999, protests the negligence penalty related to an audit performed for the calendar years 1994 & 1996 and the short years June 30, 1995 and December 31, 1995.

The taxpayer produces automobile heaters and air conditioners for automobile manufacturers.

I. **Tax Administration** Penalty

DISCUSSION

The taxpayer protests the negligence penalty assessed by the Department for the taxpayer's failure to report throwback sales from Ohio. The taxpayer argues that the penalty should be waived as the taxpayer did not act with willful intent to evade tax. The taxpayer's support for this position is the taxpayer mistakenly underreporting a Federal Net Operating Loss. The Department agrees the taxpayer did not act with willful intent to evade tax; however, the Department believes the taxpayer was inattentive to tax duties.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary

reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

As inattention is negligence and negligence is subject to penalty, the penalty protest is denied.

FINDING

The taxpayer’s penalty protest is denied.

TB/RAW/MR 992508